

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

JACK EARL RUMMERFIELD,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

Case No. 1:22-cv-01571-SAB

ORDER DENYING PLAINTIFF’S AMENDED  
MOTION FOR SUMMARY JUDGMENT;  
DIRECTING THE CLERK OF THE COURT  
TO ENTER JUDGMENT IN FAVOR OF  
DEFENDANT COMMISSIONER OF SOCIAL  
SECURITY AND AGAINST PLAINTIFF  
JACK EARL RUMMERFIELD AND TO  
CLOSE THIS ACTION

(ECF Nos. 25, 27)

**I.**

**INTRODUCTION**

Jack Earl Rummerfield (“Plaintiff”) seeks judicial review of a final decision of the Commissioner of Social Security (“Commissioner” or “Defendant”) denying his application for disability benefits pursuant to the Social Security Act. The matter is currently before the Court on the parties’ briefs, which were submitted, without oral argument, to Magistrate Judge Stanley A. Boone.<sup>1</sup>

Plaintiff requests the decision of Commissioner be vacated and the case be remanded for further proceedings, arguing the ALJ erred by failing to provide clear and convincing reasons to reject his

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<sup>1</sup> The parties have consented to the jurisdiction of the United States Magistrate Judge and this action has been assigned to Magistrate Judge Stanley A. Boone for all purposes. (See ECF Nos. 6, 10, 11.)

1 psychiatric symptomology, the mental residual functional capacity (“RFC”) assessment is not supported  
2 by substantial evidence, and the ALJ erred by failing to identify and resolve an apparent conflict  
3 between the Dictionary of Occupational Titles (“DOT”) and the vocational expert (“VE”) testimony.

4 For the reasons explained herein, Plaintiff’s amended motion for summary judgment shall  
5 be denied.

## 6 II.

### 7 BACKGROUND

#### 8 A. Procedural History

9 Plaintiff protectively filed an application for supplemental security income on November 21,  
10 2019. (AR 83.) Plaintiff’s applications were initially denied on September 1, 2020, and denied  
11 upon reconsideration on February 25, 2021. (AR 109-13, 123-27.) Plaintiff requested and received  
12 a hearing before Administrative Law Judge Trina Mengesha-Brown (“the ALJ”). Plaintiff appeared  
13 for a telephonic hearing on November 10, 2021. (AR 40-60.) On December 17, 2021, the ALJ  
14 issued a decision finding that Plaintiff was not disabled. (AR 18-34.) On September 29, 2022, the  
15 Appeals Council denied Plaintiff’s request for review. (AR 1-3.)

#### 16 B. The ALJ’s Findings of Fact and Conclusions of Law

17 The ALJ made the following findings of fact and conclusions of law as of the date of the  
18 decision, December 17, 2021:

- 19 1. Plaintiff has not engaged in substantial gainful activity since November 21, 2019, the  
20 application date.
- 21 2. Plaintiff has the following severe impairments: right elbow degenerative joint disease  
22 status-post right elbow ORIF, schizophrenia spectrum disorder, anxiety disorder,  
23 asthma, and left renal mass.
- 24 3. Plaintiff does not have an impairment or combination of impairments that meets or  
25 medically equals the severity of one of the listed impairments.
- 26 4. After careful consideration of the entire record, the ALJ found that Plaintiff has the  
27 residual functional capacity to perform light work as defined in 20 CFR § 416.967(b)  
28 with the following additional limitations: frequent climbing ramps and stairs; no

1 climbing ladders, ropes, or scaffolds; frequent stooping, kneeling, and crouching; no  
2 crawling; frequent reaching in all directions with the right upper extremity; occasional  
3 pushing and pulling a maximum of 10 pounds with the right upper extremity; the  
4 avoidance of workplace hazards and moving machinery; the avoidance of no more than  
5 moderate exposure to heat, cold, and pulmonary irritants; simple, routine tasks not at a  
6 production pace; occasional interactions with supervisors and co-workers; no  
7 interactions with the general public; and occasional changes to a routine work setting.

8 5. Plaintiff has no past relevant work.

9 6. Plaintiff was born on May 11, 1984, and was 35 years old, which is defined as a younger  
10 individual age 18-49, on the date the application was filed.

11 7. Plaintiff has at least a high school education.

12 8. Transferability of job skills is not an issue because Plaintiff does not have past relevant  
13 work.

14 9. Considering Plaintiff's age, education, work experience, and residual functional  
15 capacity, there are jobs that exist in significant numbers in the national economy that  
16 Plaintiff can perform.

17 10. Plaintiff has not been under a disability, as defined in the Social Security Act, since  
18 November 21, 2019, the date the application was filed.

19 (AR 23-33.)

### 20 **III.**

#### 21 **LEGAL STANDARD**

##### 22 **A. The Disability Standard**

23 To qualify for disability insurance benefits under the Social Security Act, a claimant must  
24 show he is unable "to engage in any substantial gainful activity by reason of any medically  
25 determinable physical or mental impairment<sup>2</sup> which can be expected to result in death or which has  
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27 <sup>2</sup> A "physical or mental impairment" is one resulting from anatomical, physiological, or psychological abnormalities  
28 that are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. 42 U.S.C. § 423(d)(3).

lasted or can be expected to last for a continuous period of not less than 12 months.” 42 U.S.C. § 423(d)(1)(A). The Social Security Regulations set out a five-step sequential evaluation process to be used in determining if a claimant is disabled. 20 C.F.R. § 404.1520;<sup>3</sup> Batson v. Comm’r of Soc. Sec. Admin., 359 F.3d 1190, 1194 (9th Cir. 2004). The five steps in the sequential evaluation in assessing whether the claimant is disabled are:

Step one: Is the claimant presently engaged in substantial gainful activity? If so, the claimant is not disabled. If not, proceed to step two.

Step two: Is the claimant’s alleged impairment sufficiently severe to limit his or her ability to work? If so, proceed to step three. If not, the claimant is not disabled.

Step three: Does the claimant’s impairment, or combination of impairments, meet or equal an impairment listed in 20 C.F.R., pt. 404, subpt. P, app. 1? If so, the claimant is disabled. If not, proceed to step four.

Step four: Does the claimant possess the residual functional capacity (“RFC”) to perform his or her past relevant work? If so, the claimant is not disabled. If not, proceed to step five.

Step five: Does the claimant’s RFC, when considered with the claimant’s age, education, and work experience, allow him or her to adjust to other work that exists in significant numbers in the national economy? If so, the claimant is not disabled. If not, the claimant is disabled.

Stout v. Comm’r, Soc. Sec. Admin., 454 F.3d 1050, 1052 (9th Cir. 2006). The burden of proof is on the claimant at steps one through four. Ford v. Saul, 950 F.3d 1141, 1148 (9th Cir. 2020). A claimant establishes a *prima facie* case of qualifying disability once she has carried the burden of proof from step one through step four.

Before making the step four determination, the ALJ first must determine the claimant’s RFC. 20 C.F.R. § 416.920(e); Nowden v. Berryhill, No. EDCV 17-00584-JEM, 2018 WL 1155971, at \*2 (C.D. Cal. Mar. 2, 2018). The RFC is “the most [one] can still do despite [her] limitations” and represents an assessment “based on all the relevant evidence.” 20 C.F.R. §§ 404.1545(a)(1); 416.945(a)(1). The RFC must consider all of the claimant’s impairments, including those that are

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<sup>3</sup> The regulations which apply to disability insurance benefits, 20 C.F.R. §§ 404.1501 et seq., and the regulations which apply to SSI benefits, 20 C.F.R. §§ 416.901 et seq., are generally the same for both types of benefits. Accordingly, while Plaintiff seeks only supplemental security income in this case, to the extent cases cited herein may reference one or both sets of regulations, the Court notes these cases and regulations are applicable to the instant matter.

not severe. 20 C.F.R. §§ 416.920(e); 416.945(a)(2); Social Security Ruling (“SSR”) 96-8p, available at 1996 WL 374184 (Jul. 2, 1996).<sup>4</sup> A determination of RFC is not a medical opinion, but a legal decision that is expressly reserved for the Commissioner. See 20 C.F.R. §§ 404.1527(d)(2) (RFC is not a medical opinion); 404.1546(c) (identifying the ALJ as responsible for determining RFC). “[I]t is the responsibility of the ALJ, not the claimant’s physician, to determine residual functional capacity.” Vertigan v. Halter, 260 F.3d 1044, 1049 (9th Cir. 2001).

At step five, the burden shifts to the Commissioner, who must then show that there are a significant number of jobs in the national economy that the claimant can perform given his RFC, age, education, and work experience. 20 C.F.R. § 416.912(g); Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). To do this, the ALJ can use either the Medical Vocational Guidelines (“grids”) or rely upon the testimony of a VE. See 20 C.F.R. § 404 Subpt. P, App. 2; Lounsbury, 468 F.3d at 1114; Osenbrock v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001). “Throughout the five-step evaluation, the ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and for resolving ambiguities.” Ford, 950 F.3d at 1149 (quoting Andrews v. Shalala, 53 F.3d 1035, 1039 (9th Cir. 1995)).

## **B. Standard of Review**

Congress has provided that an individual may obtain judicial review of any final decision of the Commissioner of Social Security regarding entitlement to benefits. 42 U.S.C. § 405(g). In determining whether to reverse an ALJ’s decision, the Court reviews only those issues raised by the party challenging the decision. See Lewis v. Apfel, 236 F.3d 503, 517 n.13 (9th Cir. 2001). Further, the Court’s review of the Commissioner’s decision is a limited one; the Court must find the Commissioner’s decision conclusive if it is supported by substantial evidence. 42 U.S.C. § 405(g); Biestek v. Berryhill, 139 S. Ct. 1148, 1153 (2019). “Substantial evidence is relevant evidence which, considering the record as a whole, a reasonable person might accept as adequate to support a conclusion.” Thomas v. Barnhart (Thomas), 278 F.3d 947, 954 (9th Cir. 2002) (quoting

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<sup>4</sup> SSRs are “final opinions and orders and statements of policy and interpretations” issued by the Commissioner. 20 C.F.R. § 402.35(b)(1). While SSRs do not have the force of law, the Court gives the rulings deference “unless they are plainly erroneous or inconsistent with the Act or regulations.” Han v. Bowen, 882 F.2d 1453, 1457 (9th Cir. 1989); see also Avenetti v. Barnhart, 456 F.3d 1122, 1124 (9th Cir. 2006).

1 Flaten v. Sec’y of Health & Human Servs., 44 F.3d 1453, 1457 (9th Cir. 1995)); see also Dickinson  
 2 v. Zurko, 527 U.S. 150, 153 (1999) (comparing the substantial-evidence standard to the deferential  
 3 clearly erroneous standard). “[T]he threshold for such evidentiary sufficiency is not high.” Biestek,  
 4 139 S. Ct. at 1154. Rather, “[s]ubstantial evidence means more than a scintilla, but less than a  
 5 preponderance; it is an extremely deferential standard.” Thomas v. CalPortland Co. (CalPortland),  
 6 993 F.3d 1204, 1208 (9th Cir. 2021) (internal quotations and citations omitted); see also Smolen v.  
 7 Chater, 80 F.3d 1273, 1279 (9th Cir. 1996). Even if the ALJ has erred, the Court may not reverse  
 8 the ALJ’s decision where the error is harmless. Stout, 454 F.3d at 1055–56. Moreover, the burden  
 9 of showing that an error is not harmless “normally falls upon the party attacking the agency’s  
 10 determination.” Shinseki v. Sanders, 556 U.S. 396, 409 (2009).

11 Finally, “a reviewing court must consider the entire record as a whole and may not affirm  
 12 simply by isolating a specific quantum of supporting evidence.” Hill v. Astrue, 698 F.3d 1153,  
 13 1159 (9th Cir. 2012) (quoting Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006)).  
 14 Nor may the Court affirm the ALJ on a ground upon which he did not rely; rather, the Court may  
 15 review only the reasons stated by the ALJ in his decision. Orn v. Astrue, 495 F.3d 625, 630 (9th  
 16 Cir. 2007); see also Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir. 2003). Nonetheless, it is not  
 17 this Court’s function to second guess the ALJ’s conclusions and substitute the Court’s judgment  
 18 for the ALJ’s; rather, if the evidence “is susceptible to more than one rational interpretation, it is  
 19 the ALJ’s conclusion that must be upheld.” Ford, 950 F.3d at 1154 (quoting Burch v. Barnhart,  
 20 400 F.3d 676, 679 (9th Cir. 2005)).

#### 21 IV.

#### 22 DISCUSSION AND ANALYSIS

23 As stated above, Plaintiff raises three issues in the instant appeal of the denial of his  
 24 application for supplemental security income: (1) the ALJ erred by failing to provide clear and  
 25 convincing reasons to reject his psychiatric symptomology; (2) the mental residual functional capacity  
 26 assessment is not supported by substantial evidence; and (3) the ALJ erred by failing to identify and  
 27 resolve an apparent conflict between the DOT and VE testimony.

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**A. Whether the ALJ Erred in Considering Plaintiff's Testimony**

Plaintiff first argues that the ALJ erred by failing to provide clear and convincing reasons to reject his symptomatic evidence. (Pl.'s Amended Motion for Summary Judgment ("MSJ") 9,<sup>5</sup> ECF No. 25.) Plaintiff argues that the reasons the ALJ provided for rejecting his symptom testimony are not clear and convincing because they are based on misrepresentations of his treatment as conservative, medical findings that he was stable post hospitalization, and activities of daily living indicating the ability to sustain workplace functioning. (MSJ 10.) Plaintiff contends that his treatment was not conservative as he was prescribed increasing dosages of antipsychotic medication, was hospitalized for a year prior to the period at issue, and the ALJ failed to explain what more aggressive or non-conservative treatment was available and not followed. (MSJ 11.)

Plaintiff also asserts that the ALJ erred by failing to discuss the well documented significant side effects of the medication that he was taking. (MSJ 12.) Plaintiff alleges that the ALJ cherry picked what she deemed to be normal and stable medical findings and fails to explain the significance of those findings. (MSJ 13.) Further, Plaintiff argues that the ALJ erred by dismissing his one-year hospitalization due to his mental issues as being prior to the period at issue because longitudinal evidence is relevant to his overall degree of functional limitation. (MSJ 14-7.) Finally, Plaintiff asserts that the ALJ mischaracterized the evidence of his daily activities, and this cannot support the ALJ's finding that his symptom testimony was inconsistent with his daily activities. (MSJ 18-20.)

Defendant counters that the ALJ complied with the regulations by providing multiple valid reasons that are supported by substantial evidence to discount Plaintiff's symptom testimony. (Def.'s Amended Responsive Brief ("Opp.") 17, ECF No. 27.) Defendant contends that the ALJ indicated that she considered the objective medical findings in the record and found that they did not fully corroborate Plaintiff's allegations. (Opp. 18.) The ALJ considered that the consultative examination noted that Plaintiff had some difficulties with tasks but otherwise was generally normal and that treatment notes also noted generally normal findings. (Opp. 18-9.) Defendant argues that

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<sup>5</sup> All references to pagination of specific documents pertain to those as indicated on the upper right corners via the CM/ECF electronic court docketing system.

1 Plaintiff's argument that the ALJ cherrypicked findings and failed to explain their significance is  
2 meritless as the relevance of the findings is evident. (Opp. 19.) Further, Defendant asserts that the  
3 ALJ did not mischaracterize the mental status examinations and Plaintiff's support for this assertion  
4 consists of irrelevant argument such as that some of the examinations were not full mental status  
5 examinations and, sometimes, he was seeking treatment for physical, rather than mental, symptoms.  
6 (Opp. 19-20.) However, Plaintiff does not describe how these objections undermine the actual  
7 findings upon which the ALJ relied. Defendant asserts that the ALJ properly found that the  
8 objective medical evidence does not fully support Plaintiff's alleged mental symptoms. (Opp. 20.)

9 Defendant also argues that the ALJ considered that Plaintiff had been psychiatrically  
10 hospitalized for about a year just prior to the relevant period but noted that during the relevant  
11 period the treatment had been conservative and limited since he had been released. Defendant  
12 contends that the ALJ considered treatment notes indicating that he was doing well, was compliant  
13 with treatment and noted that there had been no further decompensations or inpatient admissions.  
14 Defendant asserts that the ALJ did not fault Plaintiff for not seeking more aggressive treatment as  
15 Plaintiff argues but noted that his symptoms did not require more aggressive treatment. (Opp. 20.)  
16 Further, Defendant asserts that Plaintiff's extension discussion of his year long hospitalization in  
17 2018-19 does not undermine that ALJ's analysis as court's recognize that symptoms fluctuate over  
18 time. (Opp. 21.) Defendant contends that the ALJ properly considered the evidence from the  
19 relevant time period in coming to her decision. (Opp. 22.)

20 Defendant argues that the ALJ's decision which limited Plaintiff to simple tasks, no  
21 production rate pace, limited social contact, and occasional changes shows that the ALJ agreed that  
22 Plaintiff still had symptoms despite his medication use. Defendant agrees that the ALJ did not  
23 expressly discuss that Plaintiff reported side effects of a clicking sound while on Thorazine, but  
24 there was no prejudice as Plaintiff was changed to a generic and there are no further reports that the  
25 side effect continued, nor does Plaintiff explain how the clicking sound would require limitations  
26 on his ability to work. (Opp. 22.)

27 Defendant asserts that Plaintiff's daily activities were properly cited to demonstrate his  
28 inconsistent symptom allegations to the extent they contradict his claim of total debilitating



1 impairment. (Opp. 23.) Further, Defendant contends that Plaintiff's allegation that the ALJ  
 2 mischaracterized his function reports is meritless and the ALJ properly considered his daily  
 3 activities as one factor in discounting his allegations. (Opp. 23-24.)

4 1. Legal Standard

5 A claimant's statements of pain or other symptoms are not conclusive evidence of a  
 6 physical or mental impairment or disability. 42 U.S.C. § 423(d)(5)(A); SSR 16-3p; see also Orn,  
 7 495 F.3d at 635 ("An ALJ is not required to believe every allegation of disabling pain or other  
 8 non-exertional impairment."). Rather, an ALJ performs a two-step analysis to determine whether  
 9 a claimant's testimony regarding subjective pain or symptoms is credible. See Garrison v. Colvin,  
 10 759 F.3d 995, 1014 (9th Cir. 2014); Smolen, 80 F.3d at 1281; SSR 16-3p, at \*3. First, the claimant  
 11 must produce objective medical evidence of an impairment that could reasonably be expected to  
 12 produce some degree of the symptom or pain alleged. Garrison, 759 F.3d at 1014; Smolen, 80  
 13 F.3d at 1281–82. If the claimant satisfies the first step and there is no evidence of malingering,  
 14 "the ALJ may reject the claimant's testimony about the severity of those symptoms only by  
 15 providing specific, clear, and convincing reasons for doing so." Lambert v. Saul, 980 F.3d 1266,  
 16 1277 (9th Cir. 2020) (citations omitted).

17 If an ALJ finds that a claimant's testimony relating to the intensity of his pain and other  
 18 limitations is unreliable, the ALJ must make a credibility determination citing the reasons why  
 19 the testimony is unpersuasive. The ALJ must specifically identify what testimony is credible and  
 20 what testimony undermines the claimant's complaints. In this regard, questions of credibility and  
 21 resolutions of conflicts in the testimony are functions solely of the Secretary. Valentine v. Astrue,  
 22 574 F.3d 685, 693 (9th Cir. 2009) (quotation omitted); see also Lambert, 980 F.3d at 1277.

23 In addition to the medical evidence, factors an ALJ may consider include the location,  
 24 duration, and frequency of the pain or symptoms; factors that cause or aggravate the symptoms;  
 25 the type, dosage, effectiveness or side effects of any medication; other measures or treatment used  
 26 for relief; conflicts between the claimant's testimony and the claimant's conduct—such as daily  
 27 activities, work record, or an unexplained failure to pursue or follow treatment—as well as  
 28 ordinary techniques of credibility evaluation, such as the claimant's reputation for lying, internal

contradictions in the claimant's statements and testimony, and other testimony by the claimant that appears less than candid. See Ghanim v. Colvin, 763 F.3d 1154, 1163 (9th Cir. 2014); Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir. 2008); Lingenfelter, 504 F.3d at 1040; Smolen, 80 F.3d at 1284. Thus, the ALJ must examine the record as a whole, including objective medical evidence; the claimant's representations of the intensity, persistence and limiting effects of his symptoms; statements and other information from medical providers and other third parties; and any other relevant evidence included in the individual's administrative record. SSR 16-3p, at \*5.

2. Plaintiff's Relevant Testimony

a. March 2, 2020 Adult Function Report

Plaintiff completed an adult function report on March 2, 2020. (AR 292-99.) Plaintiff's ability to work is limited by his illnesses because he cannot stay focused and is restless. (AR 292.) On a normal day he will get up, eat, and stay outside most of the day and then comes in to take a nap. His conditions cause him to not be able to sleep. He does not like to change his clothes regularly and only bathes two times a week. He has long hair and washes it when he showers. He does not shave. Plaintiff is able to feed himself. (AR 293.) Plaintiff needs reminders for his personal care and his mother will tell him to shower. He does not need reminders to take his medications. Plaintiff prepares sandwiches and frozen dinners daily. He takes out the trash weekly and rakes their small yard. He needs a reminder to do these things. (AR 294.)

Plaintiff spends most of his time outside unless he is sleepy. When he travels, he rides in a car and does not go out alone because he is afraid to be by himself. He does not drive. Plaintiff shops for groceries in the store three to four times per week. He is able to pay bills and count change, but not able to handle a savings account or checkbook because it is a headache. (AR 295.) Plaintiff's hobby is watching television and he does it every day. He visits family two times per week. He goes to church once a week and attends two counseling meetings a week. He does not need anyone to accompany him. (AR 296.) Plaintiff does not have any problems getting along with others but does not like to be around a crowd. His conditions affect his ability to lift, squat, bend, stand, reach, walk, sit, kneel, talk, hear, climb stairs, his memory, completing tasks,

1 concentration, and understanding. The reason is because he has gained a lot of weight, has back  
2 problems, and scoliosis. He cannot pay attention for very long. He is able to finish what he starts  
3 and follows written and spoken instructions pretty well. (AR 297.) Plaintiff does not like change.  
4 (AR 298.)

5 **b. December 18, 2020 Adult Function Report**

6 Plaintiff completed an adult function report that is recorded in the record as dated  
7 December 18, 2020. (AR 322-28.) Plaintiff stated that he was placed in Atascadero State  
8 Hospital for approximately one year. His mental ability is limited to approximately five minutes,  
9 to focus on any given task and he is not able to sit for more than approximately five minutes. (AR  
10 322.) From the time Plaintiff wakes up until he goes to bed, he relaxes, walks around outside,  
11 and watches television. Plaintiff is restless, cannot sleep and is anxious at times. He cannot focus  
12 enough to get his own clothes, he forgets to bathe, does not comb his hair or forgets, and does not  
13 bother to shave. He is able to feed himself. (AR 323.)

14 Plaintiff goes outside four to five times per day. He travels by riding in a car and can go  
15 out alone. He does not drive. Plaintiff shops in stores for food four to five times a month. He is  
16 able to pay bills and count change with help from his mother. He does not handle a savings  
17 account or use a checkbook. (AR 324.) His hobby is hanging out with his brother and listening  
18 to music. He does this daily if his brother is not working. He spends time visiting with other  
19 people in person and on the phone, this is rarely due to the coronavirus. Plaintiff needs to be  
20 reminded to go places and someone needs to go with him. He does not have any problems getting  
21 along with others. (AR 325.)

22 Plaintiff's conditions affect his ability to talk, hear, his memory, completing tasks,  
23 concentration, understanding, following instructions, and using his hands. He cannot focus, his  
24 mind wanders, and he is forgetful. He can pay attention for five to ten minutes. He does finish  
25 what he starts. He does not follow written or spoken instructions well. He "gets into it" with  
26 authority figures. (AR 326.) He does not handle stress or changes in his routine well. He has  
27 not noticed any unusual behaviors or fears. (AR 327.)

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1           **c. November 10, 2021 Hearing Testimony**

2           Plaintiff testified at a hearing on November 10, 2021. (AR 46-57.) Plaintiff was not  
3 working and had just had surgery. (AR 46.) Plaintiff is unable to work because he has been on  
4 medication since 2014, cannot fully extend his arm and is mentally disabled. He just recently got  
5 on medication because he had not refiled for Social Security once he turned eighteen. He does  
6 not have the attention span to work, and his mental illness prevents him from working. (AR 47.)  
7 Plaintiff has been diagnosed with schizophrenia spectrum disorder, anxiety disorder, and asthma,  
8 and is status-post elbow fracture and recently had surgery for a kidney mass that was cancerous.  
9 (AR 47-8.)

10           Plaintiff was first diagnosed with schizophrenia spectrum disorder in 2014. He went  
11 through mental health programs and was referred to take medication. Plaintiff was in a mental  
12 hospital for a year. He was supposed to be released from prison, but he went to the hospital  
13 program because it was felt he needed further mental health treatment to be able to make it once  
14 he was released from prison. (AR 49.) Plaintiff got caught up in the programs offered at prison  
15 and ended up needing mental health treatment. He went in 2012 and first put in a request for  
16 treatment but he did not go and did not start taking medication until 2014. (AR 50.)

17           Plaintiff is taking his medications as prescribed. The medications are helping, they help  
18 him stay out of trouble and help him stay more focused than he was. He hears voices and, every  
19 once in a while, he will see things. The voices tell him things about his family and that he must  
20 let them go. They tell him negative things and it frustrates him. (AR 50.) He will occasionally  
21 see pictures of the past, like remembering seeing his father who passed away. (AR 50-1.) It has  
22 been a while since he has seen things. (AR 51.)

23           Plaintiff broke his arm when he was thirteen and they put screws in it. Then when he was  
24 fourteen, he broke the screws and had a second surgery to put new screws in. He cannot fully  
25 extend his arm. Due to his arm, he cannot pick things up or hold things for long periods of time.  
26 (AR 51.) Plaintiff is able to bathe himself and get dressed, but his mom reminds him. He does  
27 not know how to cook. They either eat out or his mom cooks for them. Plaintiff is able to make  
28 a sandwich. He does not have any limitations in getting along with people. (AR 52.)

1 Plaintiff has a hard time concentrating, after months he is still taking medication and is  
2 worried about the next time he will hear a voice. It makes him edgy. Plaintiff has difficulty  
3 dealing with stress during a normal day. (AR 52.) He does not have a good memory; he just  
4 remembers things in his past. He has memories of growing up with his dad, getting married and  
5 splitting up, and then moving back in with his dad, but not other things. Plaintiff needs reminders  
6 to take his medication and his mom has a weekly pill container and sets his medication out. (AR  
7 53.)

8 Plaintiff does not do grocery shopping, his mother does that for them. He will go pick out  
9 some things but does not go by himself. He would not know what to get. (AR 54.) He would  
10 need his aunt or someone to help him. (AR 54-5.)

11 He does not have any side affects from his medication. Plaintiff lays for a few hours and  
12 then will get up and lay back down and watches television most of the day. Plaintiff has not  
13 driven for over twenty years. (AR 55.)

14 3. ALJ's Findings Regarding Plaintiff's Mental Symptom Allegations

15 In discussing the severity of Plaintiff's mental limitations, the ALJ stated that, in the  
16 December 18, 2020 function report, Plaintiff alleges difficulty understanding and following  
17 directions. (AR 24, 326.) However, the ALJ found that evidence of record does not support the  
18 extent of his allegations noting that at the psychological consultive examination, Plaintiff displayed  
19 intact memory. (AR 24.) On August 12, 2020, Dr. Stafford conducted a mental evaluation. (AR  
20 465-469.) Dr. Stafford found that Plaintiff's concentration, persistence, and pace were within  
21 normal limits. (AR 467.) Examination notes that his memory is intact. (AR 24, 467.) Plaintiff  
22 was able to recall detailed autobiographical and historical information. He was able to describe  
23 specific activities prior to the examination and was able to state his address. (AR 467.) Plaintiff  
24 was able to remember three of three items immediately and three of three items in three minutes.  
25 He was able to repeat four digits forward and three digits backwards. (AR 25, 468.) Dr. Stafford  
26 found that Plaintiff's ability to perform simple and repetitive tasks was unimpaired. (AR 469.) The  
27 ALJ also considered that records from Plaintiff's treating providers denote a normal memory and  
28 coherent goal directed thought process. (AR 25, 592-615, 705.)

1 The ALJ also noted that at the consultative examination, Plaintiff stated that he has difficulty  
2 controlling his anger, but the evidence of record does not support the extent of the allegation. (AR  
3 25, 466.) On examination, Plaintiff displayed polite cooperate behavior as well as normal eye  
4 contact. (AR 25, 468.) The ALJ also noted that Plaintiff reported in his function reports that he  
5 has no problems getting along with others, including family, friends, neighbors and authority  
6 figures. (AR 25, 297, 325.) He also reported that he hangs out with his brother every day and visits  
7 with others in person and by phone. (AR 25, 325.) He shops in stores. (AR 25, 295, 324.)

8 The ALJ also considered that in his function report he stated that he can only pay attention  
9 for five to ten minutes, but the record does not support the extent of the allegations. (AR 25, 326.)  
10 The ALJ noted that the psychological consultative examination was notable for the report of  
11 paranoid delusions, the inability to complete serial threes, and the inability to spell WORLD  
12 backwards. But Plaintiff was able to calculate that seven quarters equaled \$1.75, could spell  
13 WORLD forwards, and was able to follow a three-step command. (AR 25, 468.) Plaintiff's hobbies  
14 including watching movies and going for walks in the park. (AR 25, 467.)

15 The ALJ considered that Plaintiff has been diagnosed with schizophrenia spectrum disorder  
16 and anxiety disorder. (AR 27, 469.) He also considered that Plaintiff complained of psychological  
17 symptoms including anxiety, panic attacks, hallucinations, delusions, paranoia, sleep disturbance,  
18 irritability, and mood swings. (AR 27, 465-66.) The ALJ found that the extent of Plaintiff's  
19 psychological allegations is not supported by the findings on mental status examination or the  
20 nature of his treatment; and mental status examination does not fully corroborate his allegations.  
21 (AR 27.) The ALJ noted that mental status examination at a psychological consultative examination  
22 was notable for the report of paranoid delusions, the inability to complete serial 3s, and the inability  
23 to spell WORLD backwards. However, findings were otherwise generally intact, including  
24 cooperative and polite behavior, normal eye contact, intact memory, normal fund of knowledge,  
25 and the ability to follow a 3-step command. (AR 27, 468.) The ALJ also considered that treating  
26 providers recorded intact mental status examination findings including normal memory, normal  
27 fund of knowledge, and a coherent and goal directed thought process. (AR 27, 455, 478, 504, 592,  
28 593, 594, 595, 596, 597, 598, 599, 599-600, 600-01, 601, 602, 603, 604, 605, 605-06, 606-07, 607,

608, 609, 610, 611, 612, 613, 613-14, 614, 615, 616, 617, 619, 705.) The ALJ also found that Plaintiff's mental health treatment has been conservative and limited during the period at issue. (AR 27.) Plaintiff has a past criminal history, (AR 407, 467), and after being found incompetent to stand trial, he was placed in a state mental hospital from November 2018 to October 2019. (AR 27, 407, 489.) The ALJ considered that this occurred prior to his November 2019 protected filing date, and since discharge, Plaintiff has been receiving court ordered counseling. (AR 27, 592-619.) Plaintiff's mental health medications are managed by his primary care physician. (AR 27, 446-57, 497-589.) The ALJ found that Plaintiff is on parole and appears compliant with medications and counseling. (AR 27, 446-57, 476-90, 497-589, 590-620.) There have been no decompensations or inpatient admissions since his October 2019 release from the state mental hospital; and counseling records suggest Plaintiff is doing well. (AR 27, 590-620.) Overall, the ALJ found that Plaintiff's treatment records are generally consistent with his medically determinable impairments. However, they are not consistent with Plaintiff's subjective reports of disabling symptoms and suggest that his symptoms are not as severe as he alleged. (AR 27.)

#### 4. Analysis

For the reasons discussed below, the Court finds that the ALJ provided clear and convincing reasons to reject Plaintiff's testimony regarding the severity of his symptoms.

##### **a. Conservative treatment**

Plaintiff first argues that the ALJ misrepresented that Plaintiff's treatment was conservative because he was treated with increasing dosages of antipsychotic medication, was hospitalized for a year prior to the period at issue, and failed to explain what more aggressive or nonconservative treatment was available or not followed. Here, the ALJ found that Plaintiff's mental health treatment had been conservative and limited since he was released from the state mental hospital, he appears to be compliant with his medication, there are no documented episodes of deterioration that required hospitalization, and counseling records suggest he is doing well. (AR 26, 28.) Evidence of conservative treatment is sufficient to discount a claimant's testimony regarding the severity of the impairment. Parra v. Astrue, 481 F.3d 742, 751 (9th Cir. 2007).

Plaintiff points to the following records to support a mischaracterization of his treatment as



1 conservative. On November 11, 2018, Plaintiff was seen complaining that his Remeron was not  
2 helping his anxiety and insomnia. He had learned that morning that he had been qualified as an  
3 “MDO” and he was upset. He noted that the Thorazine helps him when he feels restless and denied  
4 side effects from his medications. Plaintiff was noted to be alert, oriented, tense, and cooperative  
5 with fair hygiene. He had good eye contact, and normal speech and language. His affect was  
6 congruent. He was anxious. Thought processes were goal directed and he endorsed non-intrusive  
7 auditory hallucinations. Cognitive functioning was grossly intact, and he had fair insight and  
8 judgment. (AR 368.) Plaintiff’s medications were continued, and he was to discuss his medications  
9 with his next psychiatrist. (AR 369.)

10 Plaintiff’s discharge summary from prison, dated October 23, 2019, notes:

11 Mr. Rummerfield during his prior admission was noted to have a history of engaging  
12 in conduct disordered behavior prior to the age of 15. He began using drugs as a  
13 teenager and was convicted of grand theft auto while under the age of 15. He has  
14 multiple arrests demonstrating a pattern of disregard for and violation of the rights  
15 of others and social norms. He has demonstrated a reckless disregard for his own  
16 safety and the safety of others through his assaults on others. He has demonstrated  
17 irritability and aggressiveness. He has demonstrated a lack of remorse for some of  
18 his offenses. He appears to meet the criteria for the diagnosis of Antisocial  
19 Personality Disorder as well.

20 ...  
21 He needs to be followed up very carefully for his psychiatric diagnosis and his  
22 medications that he takes. ... Lifelong psychiatric and medical care is recommended  
23 for this patient. He needs to be followed up very closely.

24 (AR 418.) Plaintiff’s medications are listed as: Cetirizine hydrochloride, 10 mg daily;  
25 Chlorpromazine, 200 mg at night; Docusate sodium 250 mg at night; Omega-3 fatty acids/fish oil,  
26 1 capsule every day for dyslipidemia; and Risperidone 4 mg by mouth twice a day. (AR 418.)  
27 Plaintiff was discharged to parole. (AR 420.)

28 Plaintiff also references a December 9, 2019 office visit in which he complained that he had  
been unable to sleep and was requesting a sleep aid. (AR 569.) Plaintiff was to begin taking  
Trazodone, 150 mg daily and to increase to 300 mg. (AR 572.)

Plaintiff cites to a January 13, 2020 office visit where he requested to speak to Dr. Chopra  
due to possible side effects from his medication. (AR 564.) Plaintiff was taking Cetirizine  
hydrochloride, 10 mg daily; Risperidone 4 mg by mouth twice a day; and Trazodone, 300 mg daily.  
(AR 565.) On examination, Plaintiff was noted to have normal memory. He was oriented to time,



1 place, person, and affect. Mood and affect were appropriate, and insight and judgment were normal.  
2 (AR 566.) His mother reported he was having a clicking sound from the Thorazine, and it was  
3 agreed to stop the medication. (AR 567.) Plaintiff was to advise how he was doing without the  
4 medication and to return it there were any issues. (AR 567.)

5 Plaintiff next points to a May 5, 2020, office visit. On this date, Plaintiff was seen  
6 complaining of insomnia and allergies. (AR 543.) Plaintiff requested a refill of his medication and  
7 reported no side effects. His medications were to continue as directed. The record shows that he  
8 was taking Cetirizine hydrochloride, 10 mg daily; Risperidone 4 mg by mouth twice a day; and  
9 Trazodone, 300 mg daily. (AR 545.)

10 While Plaintiff argues that the medication, he was taking cannot be considered conservative  
11 treatment, the ALJ noted that Plaintiff was stable on his medications and there had been no  
12 decompensation or inpatient admissions since his October 2019 release from the state mental  
13 hospital. (AR 27.) Plaintiff's allegations that he was requiring increasing medication to address  
14 his psychiatric issues is not supported by the record. The record shows no increase in the psychiatric  
15 medications that he was taking upon release from the psychiatric hospital. While Plaintiff was  
16 placed on Thorazine to address his issues with sleeplessness in December 2019, it was discontinued  
17 in January 2020 due to a side effect of clicking noise.

18 The ALJ could reasonably find that Plaintiff's treatment following release from the  
19 psychiatric hospital was conservative and limited, he had not required any further inpatient  
20 admissions, and the psychiatric treatment notes indicated that he was stable and doing well, which  
21 did not support his allegations of the severity of his symptoms.

22 Plaintiff also argues that the ALJ erred by failing to address side effects from his  
23 medications. Plaintiff notes that on an October 30, 2019 visit with Dr. Chopra, his mother stated  
24 that he seems different and out of it. Plaintiff also had dizziness, nausea, vomiting and diarrhea  
25 that had begun two days prior. (AR 450.) His mother felt his medication was too strong and that  
26 he was being overmedicated. Plaintiff's medication was adjusted by half. (AR 451.) Plaintiff  
27 argues that the ALJ erred by failing to address that his medication made him feel out of it and unable  
28 to complete work activity, but the ALJ did address Plaintiff's allegations that he had difficulty

1 concentrating and could only concentrate for five to ten minutes. (AR 25.)

2 Plaintiff points to no further records that demonstrate he continued to have any side effects,  
3 other than the clicking sound with Thorazine (AR 567) that was discontinued the month after it was  
4 started as discussed above. (AR 545). Further a review of the medical records during the relevant  
5 time period following his release from the mental hospital show numerous notations that Plaintiff  
6 is doing well or reported that he was doing well and stable on his medication, with no side effects  
7 reported. (AR 448, 478, 479, 480, 481-82, 482, 483, 484, 485, 486, 499, 510, 536, 545, 576, 592,  
8 593, 594, 595, 596, 597, 598, 599, 599-600, 600-01, 601, 602, 603, 604, 605, 605-06, 606-07, 607,  
9 608, 609, 610, 611, 612, 613, 613-14, 614, 615, 616, 617, 619.) Finally, at the November 10, 2021  
10 hearing, Plaintiff reported that he had no side effects from his medication. (AR 55.) The Court  
11 finds no error in the ALJ's failure to address side effects from his medications in considering  
12 Plaintiff's symptom complaints.

13 The ALJ ultimately found that Plaintiff's "statements and medical records indicate  
14 inconsistencies with respect to the severity of his limitations, which weakens the persuasiveness of  
15 his allegations." "Counseling notes indicate the claimant's mental health has been stable since  
16 release from the state mental hospital in October 2019. Moreover, despite the complaints of  
17 allegedly disabling symptoms, the claimant's treatment for both physical and mental impairment  
18 has been limited and conservative." (AR 32.) The ALJ's finding that Plaintiff received  
19 conservative and limited treatment and did not decompensate or require inpatient hospitalization  
20 following his release from the state mental hospital is a clear and convincing reason to reject  
21 Plaintiff's symptom testimony.

22 **b. Inconsistency with the medical record**

23 Plaintiff argues that the ALJ erred by failing to address the findings in the medical record  
24 prior to the alleged disability period which support his symptom testimony. While Plaintiff relies  
25 heavily on the medical record prior to 2019 to argue that the ALJ mischaracterized the record, the  
26 ALJ did consider that Plaintiff had a criminal record, after being found to be incompetent to stand  
27 trial he was placed in a state mental hospital from November 2018 to October 2019, which was  
28 prior to the November 2019 protected filing date. (AR 25, 26, 28.) The ALJ noted that since his

1 discharge from the state mental hospital, he has been receiving court ordered counseling, and his  
2 mental health medication is being managed by his primary care physician. (AR 28.) Plaintiff  
3 argues the medical record prior to Plaintiff's release to demonstrate that Plaintiff's symptoms are  
4 more severe and would preclude work, however, the question is not whether there is evidence to  
5 support Plaintiff's symptom testimony, but whether the ALJ's findings are supported by substantial  
6 evidence. Jamerson v. Chater, 112 F.3d 1064, 1067 (9th Cir. 1997) ("[t]hus the key question is not  
7 whether there is substantial evidence that could support a finding of disability, but whether there is  
8 substantial evidence to support the Commissioner's actual finding that claimant is not disabled.")

9       Specifically, the ALJ noted that Plaintiff stated in his function report that he had difficulty  
10 understanding and following directions (AR 24, 326), but the ALJ noted that at the psychological  
11 examination Plaintiff's memory was intact, he was able to remember three of three items  
12 immediately, three of three items after three minutes, could repeat four digits forward and three  
13 digits backwards, and he was able to perform a three-step command (AR 24, 467-68). Further, the  
14 ALJ noted that the records of his treating providers denote normal memory and a coherent and goal  
15 directed thought process. (AR 24.) The ALJ noted Plaintiff's mental health provider records from  
16 October 28, 2019 to October 5, 2021. (AR 592, 593, 594, 595, 596, 597, 598, 599, 599-600, 600-  
17 01, 601, 602, 603, 604, 605, 605-06, 606-07, 607, 608, 609, 610, 611, 612, 613, 613-14, 614, 615,  
18 616, 617, 619.)

19       On October 28, 2019, the record notes that Plaintiff was released from the hospital with a  
20 thirty-day supply of his medication. (AR 619.) He presented with a euthymic mood and flat affect.  
21 Speech was sparse and quiet. He was alert and oriented times four. Thought processes were  
22 organized and hygiene was fair. Eye contact was appropriate and there were no suicidal or  
23 homicidal ideation, visual or auditory hallucinations. (AR 619.)

24       Plaintiff was seen again on January 29, 2020 for a telemed visit. He had fair eye contact  
25 and was cooperative and polite with fair hygiene. There were no abnormal involuntary movements.  
26 Speech was clear and coherent. Mood is noted as "done." His affect was constricted and thought  
27 processes were linear and organized. There was no suicidal or homicidal ideation. Plaintiff  
28 exhibited no hypo/mania and no psychosis. Judgment was good and insight was fair. Plaintiff was

1 alert and oriented times three. Abstraction was average. (AR 619.)

2 The ALJ noted a January 30, 2020, visit with Dr. Chopra. Plaintiff was seen with questions  
3 about his medication, his mother stated that he seemed out of it and thought he was overmedicated.  
4 (AR 564, 567.) Examination notes a normal memory. Plaintiff is oriented to time, place, person,  
5 and situation. He had appropriate mood and affect, and insight and judgment were normal. (AR  
6 566.)

7 Plaintiff was seen by his mental health provider on June 9, 2020, and June 23, 2020. (AR  
8 616, 617.) He stated he was doing well and had been taking his medication daily as prescribed. He  
9 reported his mood was stable, aspect was varied in range. Fund of information was good; speech  
10 was coherent, and goal directed. He reported his sleep, appetite, and energy were unremarkable.  
11 Insight was good and he was noted to be a good problem solver. He denied suicidal or homicidal  
12 ideation, auditory or visual hallucinations. (AR 616, 617.)

13 Plaintiff was seen on July 6, 2020; July 21, 2020; August 28, 2020; September 11, 2020;  
14 September 25, 2020; October 10, 2020; November 5, 2020; November 19, 2020; December 10,  
15 2020; December 31, 2020; January 15, 2021; February 3, 2021; February 18, 2021; March 3, 2021;  
16 March 18, 2021; April 2, 2021; May 5, 2021; May 20, 2021; June 4, 2021; June 18, 2021; July 2,  
17 2021; July 16, 2021; August 3, 2021; August 30, 2021; September 14, 2021; October 5, 2021; he  
18 continued to state he was doing well. Examination remained the same, except it is noted that he  
19 was very upbeat and much more talkative. (AR 592, 593, 594, 595, 596, 597, 597-98, 598-99, 599-  
20 600, 600-01, 601, 602, 603, 603-04, 604-05, 605-06, 606, 607, 607, 608 (dupl. of 478), 609, 609-  
21 10, 610-11, 611-12, 612-13, 613-14, 614, 615.)

22 The ALJ also noted a November 3, 2020, visit with Dr. Chopra for a well adult physical.  
23 (AR 501.) Examination notes a normal memory. Plaintiff is oriented to time, place, person, and  
24 situation. He had appropriate mood and affect, and insight and judgment were normal. (AR 504.)

25 The ALJ further considered that Plaintiff reported in his function report that he can only  
26 pay attention for five to ten minutes, but at the consultative examination, he was able to calculate  
27 that seven quarters equaled \$1.75, could spell WORLD forwards, and was able to follow a three-  
28 step command. (AR 25, 468.)

1 The determination that a claimant's complaints are inconsistent with clinical evaluations  
 2 can satisfy the requirement of stating a clear and convincing reason for discrediting the claimant's  
 3 testimony. Regennitter v. Commissioner of Social Sec. Admin., 166 F.3d 1294, 1297 9th Cir.  
 4 1999). The ALJ properly considered this evidence in weighing Plaintiff's credibility. "While  
 5 subjective pain testimony cannot be rejected on the sole ground that it is not fully corroborated  
 6 by objective medical evidence, the medical evidence is still a relevant factor in determining the  
 7 severity of the claimant's pain and its disabling effects." Rollins v. Massanari, 261 F.3d 853, 857  
 8 (9th Cir. 2001) (citing 20 C.F.R. § 404.1529(c)(2)).

9 The ALJ's finding that Plaintiff's symptom testimony was inconsistent with the medical  
 10 evidence is supported by substantial evidence. Inconsistency with the medical record is a clear and  
 11 convincing reason to discount Plaintiff's symptom testimony. Rollins, 261 F.3d at 857.

12 **c. Daily Activities**

13 The ALJ also found that Plaintiff's symptom testimony was inconsistent with his daily  
 14 activities. There are two ways for an ALJ to "use daily activities to form the basis of an adverse  
 15 credibility determination: if the claimant's activity contradicts his testimony or if the claimant's  
 16 activity meets the threshold for transferable work skills." Phillips v. Colvin, 61 F. Supp. 3d 925,  
 17 944 (N.D. Cal. 2014).

18 Here the ALJ found that Plaintiff's symptom allegations were inconsistent with his daily  
 19 activities. "[T]he mere fact that a plaintiff has carried on certain daily activities . . . does not in  
 20 any way detract from her credibility as to her overall disability." Orn, 495 F.3d at 639 (citing  
 21 Vertigan, 260 F.3d at 1050). In addressing the claimant's testimony, "the ALJ must specifically  
 22 identify the testimony she or he finds not to be credible and must explain what evidence  
 23 undermines the testimony." Holohan v. Massanari, 246 F.3d 1195, 1208 (9th Cir. 2001).  
 24 "Inconsistencies between a claimant's testimony and the claimant's reported activities provide a  
 25 valid reason for an adverse credibility determination." Burrell v. Colvin, 775 F.3d 1133, 1137  
 26 (9th Cir. 2014). However, "[g]eneral findings are insufficient; rather, the ALJ must identify what  
 27 testimony is not credible and what evidence undermines the claimant's complaints." Burrell, 775  
 28 F.3d at 1138 (quoting Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995)). "To support a lack of

credibility finding, the ALJ was required to point to specific facts in the record that would support the lack of credibility finding. Burrell, 775 F.3d at 1138.

In considering that Plaintiff alleged he was only able to pay attention for five to ten minutes, the ALJ found it inconsistent that Plaintiff's hobbies included watching movies. (AR 25, 467.) The ALJ could reasonably find that watching movies was inconsistent with Plaintiff's allegation that he could only pay attention for five to ten minutes.

Further, the ALJ noted that Plaintiff alleged difficulty controlling his anger. (AR 25.) At the consultative examination, Plaintiff stated that his mother says he has problems controlling his anger and has mood swings. When he gets angry, he will sometimes throw things. (AR 466.) The ALJ found that the evidence of record does not support the extent of the allegation. (AR 25.) At the consultative examination, Plaintiff displayed cooperative and polite behavior as well as normal eye contact. (AR 25, 468.) In his function report, Plaintiff stated he has no problems getting along with others, including family, friends, neighbors, and authority figures. (AR 25, 297, 325.) Plaintiff hangs out with his brother every day and visits with others in person and via telephone. (AR 25, 325.) He shops in stores for food. (B9E). (AR 25, 324.) The ALJ could reasonably find that Plaintiff's social interactions contradict his allegations regarding the severity of his anger issue.

The Court finds that the ALJ's findings that his daily activities contradict Plaintiff's allegations regarding the severity of his mental symptoms is a clear and convincing reason to reject Plaintiff's symptom testimony.

The ALJ provided clear and convincing reasons to reject Plaintiff's testimony regarding the severity of his mental symptoms and Plaintiff's motion for summary judgment on this ground shall be denied.

**B. Whether the mental RFC is supported by substantial evidence**

Plaintiff argues that the mental RFC is not supported by substantial evidence in the record because the ALJ rejected all medical opinions in the record. (Mot. 20.) Plaintiff contends that the ALJ took it upon herself to craft the mental RFC based on the same findings discussed above that his treatment was conservative, examination findings were generally normal, and he was stable following his release from the state mental hospital, and his activities of daily living. (Mot. 20-1.)

1 Plaintiff asserts that these findings are not supported by the record as whole and therefore  
2 substantial evidence does not support the RFC. Plaintiff states that the reasons the ALJ provided  
3 to reject the various opinions are vague, redundant and nonspecific, and even use the same language  
4 without discussing which specific portions of the opinion she is rejecting and the reason why. (Mot.  
5 21.)

6 Plaintiff contends that the ALJ did not discuss the severity of his symptoms that are  
7 consistent with the medical record and his previous hospitalization, the opinion of his treating  
8 physician that he is permanently mentally incapacitated from performing any work. Further,  
9 Plaintiff asserts that there is no discussion as to how the findings cited in the opinion render him  
10 able to perform work activity for eight hours a day on a consistent basis. (Mot. 22.) Plaintiff asserts  
11 that his ability to engage in very limited, basic functioning is tenuous at best, as it is dependent on  
12 his mother or brother accompanying him anywhere, including to doctor appointments, reminding  
13 him to take medications or to perform chores. Plaintiff asserts that he is only be able to function  
14 under a structured setting provided either by his family who supervises his activities or a psychiatric  
15 hospital. (Mot. 23.)

16 Defendant counters that the ALJ properly considered the record as a whole and substantial  
17 evidence supports the ALJ's RFC findings. Defendant contends that the ALJ's translation of the  
18 evidence of record to the mental RFC is reasonable and the rationale for such is evident from the  
19 decision and record as a whole. Defendant asserts that the ALJ considered the objective medical  
20 evidence, such as the generally consistent normal findings on mental examination, Plaintiff's  
21 conservative and effective treatment, and his daily activities. Defendant argues that although the  
22 ALJ did not find any specific opinion persuasive, they are supportive of the ultimate RFC findings.  
23 Defendant states that the evidence reasonably supports the RFC findings. (Opp. 25.) Defendant  
24 argues that Plaintiff's assertion that the ALJ did not adequately explain the rationale for the RFC  
25 finding is baseless. Defendant contends that Plaintiff is requesting for the Court to reweigh the  
26 evidence which is improper under the substantial evidence standard. Finally, Defendant points out  
27 that the ALJ did address Plaintiff's physician's opinion that he was permanently mentally  
28 incapacitated for any type of work and pointed out that this was a decision reserved for the



1 commissioner. (Opp. 26.)

2 1. Relevant Legal Standards

3 **a. Step four**

4 A claimant's RFC is "the most [the claimant] can still do despite [his] limitations." 20  
 5 C.F.R. § 416.945(a)(1). The RFC is "based on all the relevant evidence in [the] case record." 20  
 6 C.F.R. § 416.945(a)(1). "The ALJ must consider a claimant's physical and mental abilities, §  
 7 416.920(b) and (c), as well as the total limiting effects caused by medically determinable  
 8 impairments and the claimant's subjective experiences of pain, § 416.920(e)." Garrison, 759 F.3d  
 9 at 1011. At step four the RFC is used to determine if a claimant can do past relevant work and at  
 10 step five to determine if a claimant can adjust to other work. Garrison, 759 F.3d at 1011. "In  
 11 order for the testimony of a VE to be considered reliable, the hypothetical posed must include 'all  
 12 of the claimant's functional limitations, both physical and mental' supported by the record."  
 13 Thomas, 278 F.3d at 956.

14 **b. Weighing Medical Opinions and Prior Administrative Medical Findings**

15 Where, as here, a claim is filed after March 27, 2017, the revised Social Security  
 16 Administration regulations apply to the ALJ's consideration of the medical evidence. See  
 17 Revisions to Rules Regarding the Evaluation of Medical Evidence (Revisions), 82 Fed. Reg.  
 18 5844-01, 2017 WL 168819, at \*5844 (Jan. 18, 2017); 20 C.F.R. § 404.1520c. Under the updated  
 19 regulations, the agency "will not defer or give any specific evidentiary weight, including  
 20 controlling weight, to any medical opinion(s) or prior administrative medical finding(s), including  
 21 those from [the claimant's own] medical sources." 20 C.F.R. §§ 404.1520c(a); 416.920c(a).  
 22 Thus, the new regulations require an ALJ to apply the same factors to all medical sources when  
 23 considering medical opinions, and no longer mandate particularized procedures that the ALJ must  
 24 follow in considering opinions from treating sources. See 20 C.F.R. § 404.1520c(b) (the ALJ "is  
 25 not required to articulate how [he] considered each medical opinion or prior administrative  
 26 medical finding from one medical source individually."); Trevizo v. Berryhill, 871 F.3d 664, 675  
 27 (9th Cir. 2017).

28 "When a medical source provides one or more medical opinions or prior administrative



1 medical findings, [the ALJ] will consider those medical opinions or prior administrative medical  
 2 findings from that medical source together using” the following factors: (1) supportability; (2)  
 3 consistency; (3) relationship with the claimant; (4) specialization; [and] (5) other factors that  
 4 “tend to support or contradict a medical opinion or prior administrative medical finding.” 20  
 5 C.F.R. §§ 404.1520c(a), (c)(1)–(5). The most important factors to be applied in evaluating the  
 6 persuasiveness of medical opinions and prior administrative medical findings are supportability  
 7 and consistency. Woods v. Kijakazi, 32 F.4th 785, 791 (9th Cir. 2022) (citing 20 C.F.R. §§  
 8 404.1520c(a), (b)(2)). Regarding the supportability factor, the regulation provides that the “more  
 9 relevant the objective medical evidence and supporting explanations presented by a medical  
 10 source are to support his or her medical opinion(s), the more persuasive the medical opinions ...  
 11 will be.” 20 C.F.R. § 404.1520c(c)(1). Regarding the consistency factor, the “more consistent a  
 12 medical opinion(s) is with the evidence from other medical sources and nonmedical sources in  
 13 the claim, the more persuasive the medical opinion(s) ... will be.” 20 C.F.R. § 404.1520c(c)(2).

14 Accordingly, the ALJ must explain in her decision how persuasive she finds a medical  
 15 opinion and/or a prior administrative medical finding based on these two factors. 20 C.F.R. §  
 16 404.1520c(b)(2). The ALJ “may, but [is] not required to, explain how [she] considered the [other  
 17 remaining factors],” except when deciding among differing yet equally persuasive opinions or  
 18 findings on the same issue. 20 C.F.R. §§ 404.1520c(b)(2)–(3). Further, the ALJ is “not required  
 19 to articulate how [she] considered evidence from nonmedical sources.” 20 C.F.R. § 404.1520c(d).  
 20 Nonetheless, even under the new regulatory framework, the Court still must determine whether  
 21 the ALJ adequately explained how she considered the supportability and consistency factors  
 22 relative to medical opinions and whether the reasons were free from legal error and supported by  
 23 substantial evidence. See Martinez V. v. Saul, No. CV 20-5675-KS, 2021 WL 1947238, at \*3  
 24 (C.D. Cal. May 14, 2021).

## 25 2. Medical opinions and prior administrative findings

26 The ALJ considered the following medical opinions and prior administrative findings in  
 27 determining Plaintiff’s mental RFC.

28 ///

**a. Treating physician's opinion that Plaintiff was permanently mentally incapacitated from all work activity**

Plaintiff alleges that there is no discussion of his treating providers opinion that he is permanently mentally incapacitated from any type of work. (Mot. 22.) However, as Defendant points out the ALJ did discuss this opinion.

The undersigned considered an opinion in Exhibit B3F rendered by a provider with an illegible signature. (B3F). The provider opined the claimant is permanently mentally incapacitated. (B3F). The undersigned does not find the opinion persuasive. The opinion is not consistent with mental status examination findings. Mental status examination at a psychological consultative examination was notable for the report of paranoid delusions, the inability to complete serial 3s, and the inability to spell WORLD backwards. (B6F). Findings were otherwise generally intact, including cooperative and polite behavior, normal eye contact, intact memory, normal fund of knowledge, and the ability to follow a 3 step command. (B6F). The claimant's treating providers recorded intact mental status examination findings including normal memory, normal fund of knowledge, and a coherent and goal directed thought process. (See e.g., B4F/10; B7F/7; B8F/11; B9F; B13F/38). Furthermore, 20 CFR 416.927(d) provides in pertinent part that the final responsibility for deciding issues such as whether or not a claimant is disabled is reserved to the Commissioner.

(AR 30-1.)

The report at issue, is a General Assistance Employability Examination Report, dated November 20, 2019, which states that Plaintiff is permanently mentally incapacitated. His diagnosis is schizophrenia, hyperlipidemia, and allergic rhinitis. (AR 445.) The ALJ reasonably found that the opinion was inconsistent with the medial record showing that Plaintiff had generally normal mental examinations, the consultative examination demonstrating normal findings and an ability to follow a three-step command, and his condition was stable following his release from the state mental hospital.

While the ALJ must consider all medical evidence, "[t]he treating physician's opinion is not" "necessarily conclusive as to either physical condition or the ultimate issue of disability." Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989). But the ALJ may not simply reject the treating physician's opinion on the ultimate issue of disability. Ghanim, 763 F.3d at 1161.

Here, the ALJ considered the opinion from Plaintiff's treating physician but did not accept his ultimate conclusion that Plaintiff was permanently incapacitated from any type of work. Under the regulations, a medical opinion is a statement from an acceptable medical source that reflects

1 judgment about the nature and severity of the claimant's impairments. 20 C.F.R. § 404.1527(a)(1).  
2 Opinions on some issues are not medical opinions but are opinions on issues reserved for the  
3 Commissioner. 20 C.F.R. § 404.1527(a)(1). One such issue is that the claimant is "disabled" or  
4 "unable to work." 20 C.F.R. § 404.1527(d)(1). The ALJ does not give any special significance to  
5 opinions on issues that are reserved for the Commissioner. 20 C.F.R. § 404.1527(d)(3). The ALJ  
6 properly considered the opinion was inconsistent with the medical evidence and that the ultimate  
7 issue of disability was reserved for the Commissioner, the Court finds that the ALJ did not err in  
8 rejecting the opinion that Plaintiff was permanently incapacitated.

9 **b. Prior Administrative Findings**

10 The ALJ considered the prior administrative findings from the state agency medical  
11 consultants. She asserted that the psychological consultants' findings deserve consideration as  
12 these doctors have a high level of understanding of the Social Security disability program and enjoy  
13 a review of all the available evidence in the record when forming their conclusions. (AR 30.)

14 On August 28, 2020, Dr. Jacobs concluded on the initial review that Plaintiff was not  
15 significantly limited in his ability to remember locations and work-like procedures or ability to  
16 understand and remember very short and simple instructions; and he was moderately limited in his  
17 ability to understand and remember detailed instructions. Plaintiff was capable of performing  
18 simple tasks. (AR 78.)

19 Plaintiff was not significantly limited in his ability to carry out very short and simple  
20 instructions; to perform activities within a schedule, maintain regular attendance and be punctual  
21 within customary tolerances; to sustain an ordinary routine without special supervision; to work in  
22 coordination with or in proximity to others without being distracted by them, and to make simple  
23 work-related decisions. (AR 78-9.) Plaintiff was moderately limited in his ability to carry out  
24 detailed instructions; to maintain attention and concentration for extended periods; to complete a  
25 normal workday and workweek without interruptions from psychologically based symptoms and  
26 to perform at a consistent pace without an unreasonable number and length of rest periods. Plaintiff  
27 retains the capacity to sustain concentration, persistence, and pace for simple tasks. (AR 79.)

28 Plaintiff was not significantly limited in his ability to be aware of normal hazards and take

1 appropriate precautions, to travel in unfamiliar places or use public transportation, and to set  
2 realistic goals or make plans independently of others. He was moderately limited in his ability to  
3 respond appropriately to changes in the work setting. Plaintiff maintains the ability to adapt to  
4 infrequent changes. (AR 79.)

5 On February 21, 2021, Dr. Stern issued an opinion on Plaintiff's mental residual capacity  
6 on reconsideration. Dr. Stern found that Plaintiff retained the capacity to perform simple tasks.  
7 (AR 100-01.) He can sustain concentration, persistence, and pace to perform simple tasks. (AR  
8 102.) Dr. Stern also found that Plaintiff was not significantly limited in his ability to ask simple  
9 questions or request assistance, and to maintain socially appropriate behavior and adhere to basic  
10 standards of neatness and cleanliness. He was moderately limited in his ability to interact  
11 appropriately with the general public, to accept instructions and respond appropriately to criticism  
12 from supervisors, and to get along with coworkers or peers without distracting them or exhibiting  
13 behavioral extremes. (AR 102-03.) Plaintiff requires limited contact. Plaintiff retains the capacity  
14 to adapt to infrequent changes. (AR 103.) Plaintiff is capable of performing the basic mental  
15 demands of unskilled work-like activity with limited peer and public contact. (AR 103-04.)

16 The ALJ did not find the conclusions persuasive because they are not supported by the  
17 examiners' analysis of records reviewed, and they are not consistent with records submitted after  
18 they reviewed the file. (AR 30.) The ALJ found that mental status examination at a psychological  
19 consultative examination was notable for the report of paranoid delusions, the inability to complete  
20 serial 3s, and the inability to spell WORLD backwards. (AR 30, 468.) Otherwise, findings were  
21 generally intact, including cooperative and polite behavior, normal eye contact, intact memory,  
22 normal fund of knowledge, and the ability to follow a 3 step command. (AR 30, 468.) Plaintiff's  
23 treating providers recorded intact mental status examination findings including normal memory,  
24 normal fund of knowledge, and a coherent and goal directed thought process. (AR 30, 455, 468-69,  
25 478, 504, 592, 593, 594, 595, 596, 597, 598, 599, 599-600, 600-01, 601, 602, 603, 604, 605, 605-  
26 06, 606-07, 607, 608, 609, 610, 611, 612, 613, 613-14, 614, 615, 616, 617, 619, 705.) Further, the  
27 ALJ considered that Plaintiff's mental health treatment has been conservative and limited during  
28 the period at issue. (AR 30.) Plaintiff was in a state mental hospital from November 2018 to

1 October 2019, which occurred prior to his November 2019 protected filing date. Since discharge,  
2 Plaintiff has been receiving court ordered counseling. (AR 30, 476-90.) He appears compliant with  
3 medications/counseling. (AR 30, 446-57, 476-90, 497-589, 590-620). There have been no  
4 decompensations or inpatient admissions since his October 2019 release from the state mental  
5 hospital and counseling records suggest Plaintiff is doing well. (AR 30, 476-90.)

6 **c. Consultative Examination**

7 The ALJ also considered the opinion of Dr. Stafford who conducted a consultative  
8 psychiatric examination on August 12, 2020. (AR 30, 465-70.) Dr. Stafford opined that Plaintiff  
9 had the capacity to manage supplemental funds. His ability to perform simple and repetitive tasks  
10 was unimpaired. His ability to perform detailed and complex tasks is moderately impaired due to  
11 avolition, requiring reminders to complete his activities of daily living, and auditory hallucinations.  
12 His ability to accept instructions from supervisors is mildly impaired. Plaintiff ability to interact  
13 with co-workers, supervisors, and the public is moderately impaired due to paranoid delusions,  
14 auditory hallucinations, mood lability, low frustration tolerance, and history of poor insight and  
15 judgment. His ability to perform activities on a consistent basis without special or additional  
16 instructions is mildly impaired. (AR 469.) Plaintiff's ability to maintain regular attendance in the  
17 workplace is moderately impaired due to a history of poor insight and judgment, low frustration  
18 tolerance, auditory hallucinations, and mood lability. His ability to complete a normal workday  
19 without interruptions from a psychiatric condition is moderately impaired due to his symptoms of  
20 psychosis, low frustration tolerance, mood lability, history of poor insight and judgment, and  
21 limited coping skills. His ability to deal with the usual stress encountered in the workplace is  
22 moderately impaired due to his paranoid delusions, auditory hallucinations, mood lability,  
23 symptoms of anxiety, limited coping skills, and history of poor insight and judgement. (AR 470.)

24 The ALJ did not find the opinion persuasive. The given limitations were found to be overly  
25 restrictive and not supported by Dr. Stafford's own mental status examination findings. Mental  
26 status examination at the psychological consultative examination was notable for the report of  
27 paranoid delusions, the inability to complete serial 3s, and the inability to spell WORLD backwards.  
28 (AR 30, 468.) But findings were otherwise generally intact, including cooperative and polite

1 behavior, normal eye contact, intact memory, normal fund of knowledge, and the ability to follow  
2 a 3-step command. (AR 30, 468.) Further, the ALJ found that the opinion was inconsistent with  
3 the conservative and limited mental health treatment; since discharge from the state mental hospital,  
4 Plaintiff has been receiving court ordered counseling; he appears compliant with medication and  
5 counseling; there have been no decompensations or inpatient admissions since his October 2019  
6 release; and treatment records indicate he is doing well as discussed above. (AR 30.)

7       3.       Analysis

8       Plaintiff argues that the ALJ's three repeated verbatim references to the same citations fail  
9 to support any significant limitations. However, the inference from the references that the ALJ  
10 cites are evident. The ALJ found that the records following Plaintiff's release from the state mental  
11 hospital demonstrate generally normal mental findings and he is compliant and stable on his  
12 medication and with treatment.

13       Plaintiff also argues that the ALJ fails to acknowledge his continuing severe paranoia and  
14 hallucinations, without citation to any such findings during the relevant time period. The record  
15 itself demonstrates that Plaintiff denied having auditory or visual hallucinations following his  
16 release from the state hospital. (AR 592, 593, 594, 595, 596, 597, 598, 599, 599-600, 600-01, 601,  
17 602, 603, 604, 605, 605-06, 606-07, 607, 608, 609, 610, 611, 612, 613, 613-14, 614, 615, 616, 617,  
18 619.) At the August 2020 consultative examination, Plaintiff stated it had been three years since  
19 he had seen spirits. (AR 466.) During the November 2021 hearing, Plaintiff stated that it had been  
20 a while since he had seen things. (AR 51.) Additionally, he testified that as the weeks and months  
21 go by, he is worried about when he will hear a voice and it makes him edgy. (AR 53.)

22       Plaintiff further argues that the ALJ cherry picked findings that she found to be normal and  
23 cites the record prior to Plaintiff's release from the state mental hospital. However, citations to  
24 findings during Plaintiff's hospitalization do not call into question the ALJ's finding that after his  
25 release Plaintiff's mental health findings are generally normal, he was stable, doing well, and  
26 compliant with medication and treatment.

27       Plaintiff does point to two findings following his release from the state mental hospital. On  
28 October 28, 2019, the day of Plaintiff's release from the state mental hospital, his speech is noted

1 to be sparse and quiet. (AR 619.) However, there are no further such notations, and starting July  
2 6, 2020, the record consistently notes that Plaintiff is much more talkative and very upbeat. (AR  
3 592, 593, 594, 595, 596, 597, 598, 599, 599-600, 600-01, 601, 602, 603, 604, 605, 605-06, 606-07,  
4 607, 608, 609, 610, 611, 612, 613, 613-14, 614, 615.)

5 Plaintiff also states that he had insomnia on November 20, 2020. Plaintiff was seen at the  
6 appointment to receive test results from his physical on November 3, 2020. The record merely  
7 notes that Plaintiff was requesting a refill on his insomnia medication and reported no side effects.  
8 (AR 499.) Plaintiff has not demonstrated that the ALJ ignored significant objective evidence from  
9 other medical and nonmedical sources in the record that are consistent with the medical opinion  
10 rejected. Thompson v. Comm’r of Soc. Sec., No. 2:20-CV-3-KJN, 2021 WL 1907488, at \*6 (E.D.  
11 Cal. May 12, 2021).

12 As to Plaintiff’s mental RFC, the ALJ found that he was limited to simple, routine tasks not  
13 at a production pace; occasional interactions with supervisors and co-workers; no interactions with  
14 the general public; and occasional changes to a routine work setting. (AR 26.) In addressing the  
15 mental RFC, the ALJ stated,

16 In particular, his mental impairments and associated symptoms, including anxiety,  
17 panic attacks, hallucinations, delusions, paranoia, sleep disturbance, irritability, and  
18 mood swings, limit him to the following: simple, routine tasks not at a production  
19 pace; occasional interactions with supervisors and coworkers; no interactions with  
20 the general public; and occasional changes to a routine work setting.

21 (AR 29.)

22 Plaintiff argues that the ALJ rejected all the opinions in the record and crafted the findings  
23 that she found to be generally normal into the RFC. It is not necessary for the ALJ “to agree with  
24 everything an expert witness says in order to hold that his testimony contains ‘substantial evidence.’”  
25 Magallanes, 881 F.2d at 753 (citations omitted). Here, the ALJ clearly accepted some of the  
26 limitations opined in the medical opinions and prior administrative findings. Plaintiff was limited  
27 to simple, routine tasks which is consistent with the opinions of Dr. Jacobs, Dr. Stern, and Dr.  
28 Stafford. (AR 78, 79, 100-01, 102, 469.) However, the ALJ included the additional limitation that  
the work not be at a production pace. The ALJ found that Plaintiff was limited to occasional  
interactions with supervisors and co-workers and no interactions with the public. This is consistent



1 with the opinions of Dr. Stern who opined that Plaintiff was capable of performing the basic  
2 demands of unskilled work with limited peer and public contact and Dr. Stafford's opinion that  
3 Plaintiff was moderately limited in his ability to interact with co-workers, supervisors, and the  
4 public. (AR 103-04, 469.) The ALJ also found that Plaintiff was limited to occasional changes in  
5 the work setting. This is consistent with the opinions of Drs. Jacobs and Stern who opined that  
6 Plaintiff maintained the ability to adapt to infrequent changes. (AR 79, 103.)

7 Plaintiff argues that the ALJ failed to explain how the ALJ's findings demonstrate that he  
8 is capable of functioning 8 hours a day 5 days per week. However, the agency physicians opined  
9 that Plaintiff retained the capacity to sustain concentration, persistence, and pace for simple tasks.  
10 (AR 79, 102.) Substantial evidence supports the mental RFC findings, and Plaintiff's motion for  
11 summary judgment on this ground shall be denied.

12 **c. Whether there is an apparent conflict with the DOT**

13 Lastly, Plaintiff argues that the ALJ harmfully erred by failing to identify and resolve an  
14 apparent conflict between the DOT and VE testimony. (Mot. 23-4.) Plaintiff contends that the  
15 limitation of 10 pounds of pushing and pulling occasionally with the upper extremity is inconsistent  
16 with the jobs identified by the VE. Plaintiff asserts that there was no discussion of the VE regarding  
17 the pushing and pulling limitations and the jobs identified. (Mot. 24.) Plaintiff states that the  
18 ALJ harmfully erred by failing to ask the VE about the apparent conflict between the pulling and  
19 pushing limitations with the upper right extremity and the jobs including Laundry Aide DOT  
20 369.687-018; Mail Clerk, DOT 209.687-026 and Housekeeping Cleaner, DOT 323.687-014 all of  
21 which require "frequent" reaching and handling per case law in this circuit. (Mot. 25.)

22 Defendant counters that there is no apparent conflict between the RFC restricting Plaintiff  
23 to occasional pushing and pulling a maximum of 10 pounds with the upper right extremity and the  
24 jobs identified by the VE. Defendant argues that a review of the descriptions of the jobs identified  
25 does not raise any foreseeable possibility that the Plaintiff would be required to push and/or pull  
26 any significant amount of weight with the upper right extremity without the option to rely on his  
27 unrestricted left upper extremity which would be an unusual job requirement. (Opp. 27.) Further,  
28 Defendant contends that Plaintiff was limited to a range of light work which restricted him to lifting,



1 carrying, pushing, or pulling no more than 20 pounds occasionally and 10 pounds frequently, with  
 2 the ability to reach frequently in all directions with the right upper extremity and no restrictions to  
 3 the upper left extremity. Defendant asserts that, if Plaintiff needed to push and/or pull more than  
 4 occasionally as part of the job, he could most likely rely more heavily on his unrestricted left upper  
 5 extremity. (Opp. 28.)

6 1. Legal Standard

7 As previously noted, at step five, the Commissioner must “identify specific jobs existing  
 8 in substantial numbers in the national economy that [a] claimant can perform despite [his]  
 9 identified limitations.” Zavalin v. Colvin, 778 F.3d 842, 845 (9th Cir. 2015) (citation and internal  
 10 quotations omitted). That is, the ALJ must consider potential occupations the claimant may be  
 11 able to perform, based on the claimant’s RFC, age, education and work experience, and the  
 12 information provided by the DOT and the VE. See id. at 846; Valentine, 574 F.3d at 689; 20  
 13 C.F.R. § 416.920(g).

14 “The DOT lists maximum requirements of occupations as generally performed, not the  
 15 range of requirements of a particular job as it is performed in specific settings.” SSR 00-4p,  
 16 available at 2000 WL 1898704 (Dec. 4, 2000). “The term ‘occupation,’ as used in the DOT,  
 17 refers to the collective description of those jobs. Each occupation represents numerous jobs.” Id.;  
 18 see also Johnson v. Shalala, 60 F.3d 1428, 1435 (9th Cir. 1995) (noting the DOT is not  
 19 comprehensive, that “[i]ntroduction of evidence of the characteristics of specific jobs available in  
 20 the local area through the testimony of a vocational expert is appropriate, even though the job  
 21 traits may vary from the way the job title is classified in the DOT,” and holding “[T]he ALJ was  
 22 within his rights to rely solely on the vocational expert’s testimony.”) (citations  
 23 omitted). Information about a particular job’s requirements may be available from a VE’s  
 24 experience in job placement or career counseling. SSR 00-4p. Thus, a VE may be able to provide  
 25 more specific information about jobs or occupations than the DOT. Id.; see also Lounsbury, 468  
 26 F.3d at 1114. Accordingly, the ALJ may rely on VE testimony regarding “(1) what jobs the  
 27 claimant, given his or her [RFC], would be able to do; and (2) the availability of such jobs in the  
 28 national economy.” Tackett v. Apfel, 180 F.3d 1094, 1101 (9th Cir. 1999); Lockwood v. Comm’r

1 of Soc. Sec., 616 F.3d 1068, 1071 (9th Cir. 2010) (the ALJ can meet the agency’s burden of  
2 proving that other work exists in significant numbers by the testimony of a VE).

3 SSR 00-4p provides that where there is an apparent unresolved conflict between VE  
4 evidence and the DOT, the ALJ is required to reconcile the inconsistency; that is, the ALJ must  
5 elicit a reasonable explanation for the conflict before relying on the VE to support a determination  
6 or decision about whether the claimant is disabled. SSR 00-4p, at \*2; see also Johnson, 60 F.3d  
7 at 1435 (holding that, if the ALJ relies on a VE’s testimony that contradicts the DOT, the record  
8 must contain “persuasive evidence to support the deviation.”). “An example of a conflict between  
9 the DOT and a VE’s testimony is when the DOT’s description of a job includes activities a  
10 claimant is precluded from doing, and the VE nonetheless testifies that the claimant would be  
11 able to perform that job.” Martinez v. Colvin, No. 1:14-cv-1070-SMS, 2015 WL 5231973, at \*4  
12 (E.D. Cal. Sept. 8, 2015) (citations omitted). The ALJ must inquire, on the record at the disability  
13 hearing, as to whether or not there is such consistency. SSR 00-4p, at \*2; Massachi v. Astrue, 486  
14 F.3d 1149, 1153–54 (9th Cir. 2007).

15 Where the ALJ fails to resolve an apparent inconsistency, the court is left with “a gap in  
16 the record that precludes [it] from determining whether the ALJ’s decision is supported by  
17 substantial evidence.” Zavalin, 778 F.3d at 846; Massachi, 486 F.3d at 1154 (“we cannot  
18 determine whether the ALJ properly relied on [the VE’s] testimony” due to unresolved  
19 occupational evidence). Nevertheless, a failure to ask the VE whether her testimony conflicts  
20 with the DOT may amount to harmless error if there is no conflict, or if the VE provides  
21 “sufficient support for her conclusion so as to justify any potential conflicts.” Massachi, 486 F.3d  
22 at 1154, n.19; see also Hann v. Colvin, No. 12-cv-06234, 2014 WL 1382063, at \*15 (N.D. Cal.  
23 Mar. 28, 2014).

## 24 2. VE testimony

25 Kathleen Doehla, a VE, testified at the hearing. (AR 57-59.) The ALJ presented a  
26 hypothetical of an individual of the same age and education as Plaintiff who can work at the light  
27 exertional level, with the ability to frequently climb stairs and ramps; cannot climb ladders, ropes,  
28 or scaffolds, can frequently stoop, kneel, and crouch, but cannot crawl; can frequently reach in all

1 directions with the upper right extremity and can occasionally push and pull a maximum of ten  
2 pounds with the upper right extremity; must avoid workplace hazards and moving machinery; must  
3 avoid no more than moderate exposure to heat, cold, and pulmonary irritants; is limited to simple,  
4 routine tasks not at a production pace; can have occasional interactions with supervisors and  
5 coworkers, but none with the general public; and can tolerate occasional changes to a routine work  
6 setting. (AR 58.) The VE opined that the individual could perform work as a housekeeping cleaner,  
7 DOT 323.687-014, SVP 2, light, with approximately 133,000 positions in the nation; laundry aide,  
8 DOT 369.687-018, SVP 2, light, with approximately 85,000 positions in the nation; and mail clerk,  
9 DOT 209.687-026, SVP 2, light, with approximately 47,000 positions in the nation. (AR 58-9.)

10 The ALJ asked about time off task and absences that would be permitted by employers. The  
11 VE opined that, based on professional experience as to that topics which are not addressed in the  
12 DOT, there could be no more than ten percent off task and no more than seven excused absences a  
13 year. The ALJ asked if the VE's testimony was consistent with the DOT. The VE opined that she  
14 believed it would be consistent, other than those areas that she stated were not addressed in the  
15 DOT. (AR 59.)

16 3. Analysis

17 Relying on the VE's testimony, the ALJ found that Plaintiff could perform work as a laundry  
18 aide, DOT 369.687-018, SVP 2, light, with approximately 85,000 positions in the nation; and mail  
19 clerk, DOT 209.687-026, SVP 2, light, with approximately 47,000 positions in the nation; and  
20 housekeeping cleaner, DOT 323.687-014, SVP 2, light, with approximately 133,000 positions in  
21 the nation. The regulations define light work as follows.

22 Light work involves lifting no more than 20 pounds at a time with frequent lifting  
23 or carrying of objects weighing up to 10 pounds. Even though the weight lifted may  
24 be very little, a job is in this category when it requires a good deal of walking or  
25 standing, or when it involves sitting most of the time with some pushing and pulling  
26 of arm or leg controls. To be considered capable of performing a full or wide range  
of light work, you must have the ability to do substantially all of these activities. If  
someone can do light work, we determine that he or she can also do sedentary work,  
unless there are additional limiting factors such as loss of fine dexterity or inability  
to sit for long periods of time.

27 20 C.F.R. § 416.967(b).

28 The DOT defines the positions identified by the ALJ as follows:

Folds fluff-dried or pressed laundry, such as shirts, towels, uniforms, and jackets: Shakes out, smooths, folds, sorts, and stacks wash according to identification tags. Inspects pressed laundry for holes or tears, and separates defective articles for transfer to repair department. Folds laundry, preparatory to wrapping, for delivery to customer. Folds pressed shirts around cardboard forms and inserts assembly in plastic bags. May attach missing buttons to articles, using button-sewing-machine or button-attaching machine. May unload tumbler. May turn socks, match pairs, and tie socks into bundles. May be designated according to type of laundry folded as Shirt Folder (laundry & rel.) I; Wearing-Apparel Folder (laundry & rel.).

Folder, DOT 369.687-018, 1991 WL 673072 (1991).

Sorts incoming mail for distribution and dispatches outgoing mail: Opens envelopes by hand or machine. Stamps date and time of receipt on incoming mail. Sorts mail according to destination and type, such as returned letters, adjustments, bills, orders, and payments. Readdresses undeliverable mail bearing incomplete or incorrect address. Examines outgoing mail for appearance and seals envelopes by hand or machine. Stamps outgoing mail by hand or with postage meter. May fold letters or circulars and insert in envelopes [FOLDING-MACHINE OPERATOR (clerical) 208.685-014]. May distribute and collect mail. May weigh mail to determine that postage is correct. May keep record of registered mail. May address mail, using addressing machine [ADDRESSING-MACHINE OPERATOR (clerical) 208.582-010]. May be designated according to type of mail handled as Mail Clerk, Bills (clerical).

Mail Clerk, DOT 209.687-026, 1991 WL 671813 (1991).

Cleans rooms and halls in commercial establishments, such as hotels, restaurants, clubs, beauty parlors, and dormitories, performing any combination of following duties: Sorts, counts, folds, marks, or carries linens. Makes beds. Replenishes supplies, such as drinking glasses and writing supplies. Checks wraps and renders personal assistance to patrons. Moves furniture, hangs drapes, and rolls carpets. Performs other duties as described under CLEANER (any industry) I Master Title. May be designated according to type of establishment cleaned as Beauty Parlor Cleaner (personal ser.); Motel Cleaner (hotel & rest.); or according to area cleaned as Sleeping Room Cleaner (hotel & rest.).

Cleaner, Housekeeping, DOT 323.687-014, 1991 WL 672783 (1991).

The position of house cleaner does present a clear conflict with Plaintiff's limitation of occasional pushing and pulling a maximum of 10 pounds with the right upper extremity as it requires moving furniture which is an apparent conflict the ten-pound pushing pulling limitation. See Zavalin, 778 F.3d at 846 (providing example of apparent conflict as "expert testimony that a claimant can perform an occupation involving DOT requirements that appear more than the claimant can handle"). The ALJ erred by failing to resolve this apparent conflict.

However, the two remaining jobs descriptions do not reveal any apparent conflict with the DOT. While Plaintiff relies on the description of light work to argue that the jobs require either a

1 good deal of walking or standing, or when it involves sitting most of the time with some pushing  
2 and pulling of arm or leg controls, there is no indication in the description of the positions to show  
3 they would require sitting most of the time with some pushing or pulling of arm or leg controls.  
4 The position of laundry folder may require the unloading of a tumbler which may raise a conflict  
5 with the DOT but not an apparent conflict with the pushing/pulling limitations.

6 Even assuming that the ALJ erred by failing to identify a conflict with the positions of house  
7 cleaner and laundry folder. The Court finds the error to be harmless. The ALJ also identified the  
8 position of mail clerk. A review of the position does not identify any essential job duties that would  
9 require pushing or pulling in excess of Plaintiff's limitations. The DOT description references the  
10 position may use a machine to open letters, a postal meter, a mail sealing machine, or a machine to  
11 address mail. None of the machines listed would create an apparent conflict with Plaintiff's  
12 limitation to no more than pushing or pulling of ten pounds with the right upper extremity.  
13 Plaintiff's argument that the position may require pushing or pulling more than ten pounds with the  
14 right arm and therefore conflicts with his limitations fails to establish an apparent conflict.

15 As stated above, at step five, the burden shifts to the Commissioner, who must then show  
16 that there are a significant number of jobs in the national economy that the claimant can perform  
17 given his RFC, age, education, and work experience. 20 C.F.R. § 416.912(g); Lounsbury, 468  
18 F.3d at 1114. The Ninth Circuit has declined to adopt a "bright line" rule about the sufficiency of  
19 job numbers and has found that a comparison to other cases is instructive. Beltran v. Astrue, 700  
20 F.3d 386, 389 (9th Cir. 2012). In Gutierrez v. Commr of Soc. Sec., 740 F.3d 519 (9th Cir. 2014),  
21 the Ninth Circuit considered what constitutes a region for the purposes of the regulations. After  
22 finding that the region could include the entire state, the court then determined that 25,000  
23 nationally was a close call but affirmed the ALJ's decision holding that 25,000 jobs nationally is a  
24 significant number of jobs. Gutierrez, 740 F.3d at 529.

25 The VE stated there were approximately 47,000 mail sorter positions in the nation. (AR  
26 59.) The Court finds that the 47,000 jobs identified by the ALJ is above the 25,000 jobs which the  
27 Ninth Circuit found to be a "significant number". Accordingly, any error in finding that Plaintiff  
28 can work as a house cleaner or laundry folder was harmless as a significant number of jobs still

1 exist in the national economy with the deletion of those job from the equation.

2 Accordingly, the Court finds that any error due to failing to resolve an apparent conflict in  
3 the positions of house cleaner or laundry folder would be harmless. Plaintiff's motion for summary  
4 judgment shall be denied.

5 V.

6 **CONCLUSION AND ORDER**

7 For the reasons stated, the Court denies Plaintiff's amended motion for summary judgment  
8 and finds no harmful error warranting remand of this action.

9 Accordingly, IT IS HEREBY ORDERED that Plaintiff's amended motion for summary  
10 judgment is DENIED. It is FURTHER ORDERED that judgment be entered in favor of Defendant  
11 Commissioner of Social Security and against Plaintiff Jack Earl Rummerfield. The Clerk of the  
12 Court is directed to CLOSE this action.

13 IT IS FURTHER ORDERED that the Clerk of the Court shall administratively terminate  
14 Plaintiff's motion for summary judgment (ECF No. 18) and Defendant's brief (ECF No. 22).

15 IT IS SO ORDERED.

16  
17 Dated: March 27, 2024

  
UNITED STATES MAGISTRATE JUDGE